

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

SMITH & HAWKEN, LTD.,  
a Delaware Corporation,

No. C 04-1664 SBA

Plaintiff,

**ORDER**

v.

[Docket Nos. 89 & 109]

GARDENDANCE, INC., a North Carolina  
Corporation, and MARK DONLEY, an  
individual,

Defendants.

---

This matter comes before the Court on the Plaintiff's Motion for (1) an Award of Prevailing Party Attorney's Fees Pursuant to 17 U.S.C. § 505 and (2) an Order of Sanctions Against Defendants and their Counsel, filed on August 15, 2005 [Docket No. 89]. On October 24, 2005, this Court referred Plaintiff's Motion to a Magistrate Judge for a report and recommendation. The case was referred to Magistrate Judge Maria-Elena James on October 25, 2005. On December 19, 2005, Magistrate Judge James issued a report and recommendation [Docket No. 109].

Pursuant to Federal Rule of Civil Procedure 72(a), "[w]ithin 10 days after being served with a copy of the magistrate judge's order, a party may serve and file objections to the order; a party may not thereafter assign as error a defect in the magistrate judge's order to which objection was not timely made." Fed. R. Civ. P. 72(a). The ten-day period for filing objections has elapsed. None of the parties filed any objections to the report, timely or otherwise.

Having considered the report, and the recommendations therein, and for good cause appearing, this Court hereby ADOPTS Magistrate Judge James' Report and Recommendation re Plaintiff's Motion for an Award of Prevailing Party Attorney's Fees and Plaintiff's Motion for Sanctions.

Accordingly,

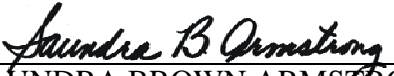
1 IT IS HEREBY ORDERED THAT Magistrate Judge James' Report and Recommendation re  
2 Motion for an Award of Prevailing Party Attorney's Fees and Plaintiff's Motion for Sanctions [Docket  
3 No. 109] is ADOPTED.

4 IT IS FURTHER ORDERED THAT Plaintiff's Motion for an Award of Prevailing Party  
5 Attorney's Fees is GRANTED. The Court finds that an award of attorney fees in this matter is  
6 appropriate. Plaintiff's success in this case is complete and unquestionable, the claims it brought were  
7 not frivolous, Plaintiff's success furthers the policies of the Copyright Act, and an award of attorney's  
8 fees will not impose too great or inequitable a burden on Defendants. In fact, Defendants did not oppose  
9 or otherwise raise any objection to Plaintiff's request for attorney's fees. Consequently, the Court awards  
10 attorney's fees to Plaintiff in the amount of \$106,948.89.

11 IT IS FURTHER ORDERED THAT Plaintiff's Motion for Sanctions is DENIED. Plaintiff has  
12 not demonstrated that Defendants or their counsel acted with an improper purpose or with bad faith.

13 IT IS SO ORDERED.

14  
15 Dated: 2/9/06

  
SAUNDRA BROWN ARMSTRONG  
United States District Judge